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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,646	10/11/2001	Loren R. Pickart	15672-000710	2075

20350 7590 05/31/2007

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EXAMINER	
TELLER, ROY R	

ART UNIT	PAPER NUMBER
1654	

MAIL DATE	DELIVERY MODE
05/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/976,646	PICKART, LOREN R.	
	Examiner	Art Unit	
	Roy Teller	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication; even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5-9,13-15 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5-9,13-15 and 17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to the petition, received 3/2/ 06 and granted 5/25/06. The 6/21/04 abandonment, following the 11/26/03 office action, was withdrawn.

Claims 1, 3, 5-9, 13-15 and 17-20 are under examination.

Response to Amendments/ Arguments

Applicant's arguments and amendments filed 3/2/06 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed is herein withdrawn.

Double Patenting

Claims 1, 3, 5-9, 13-15 and 17-20 are/stand rejected under the judicially created doctrine of obviousness-type double patenting for the reasons of record which are restated below.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 5-9, 13-15 and 17-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,382,431 in view of claims 1 and 3-7 of U.S. Patent No. 5,888,522. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention of US '431 is drawn to accelerating wound healing via topically applying an effective amount of an ionic metal-peptone (peptide) digest (hydrolyzate) thereto, whereas the instant claims are drawn to a method of remodeling blemished skin via topically applying an effective amount of a ionic metal-peptide (peptone) hydrolyzate (digest) thereto. It is well accepted in the medical art that skin blemishes read upon a type of skin wound and, therefore, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to treat skin blemishes (wounds) via the claimed method of US '431. It would also have been obvious to one of ordinary skill in the art to prepare the ionic metal-peptone digest used in the US '431 claims via the preparation methods beneficially disclosed in US '522 (see entire document including claims). The adjustment of particular conventional working conditions (e.g., digesting the peptide via one of various commonly employed, art-recognized techniques- such as those instantly claimed), is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Thus the claims are considered to be obvious variations (by claim terminology) of using the same product- and not patentably distinct. In view of the forgoing, the current invention is an

obvious variation of the invention claimed in U.S. Patent No. 5,382,431 in view of U.S. Patent No.5,888,522.

Applicant's arguments were carefully considered but were not found persuasive. Applicant contends that the treatment of skin blemishes take a very different approach from the healing process as described in the '~~432~~ 431 and '522 patents. Applicant contends that the present invention accelerates remodeling of skin without the necessity for chemical peels. However, the examiner contends that the method for stimulating remodeling of blemished skin in a mammal, comprising administering to the blemished skin a composition that comprises a peptone digest complexed with an ionic metal in an amount effective to remodel the skin is an obvious variation (by claim terminology) of using the same product-and is not patentably distinct. It is well accepted in the medical art that skin blemishes read upon a type of skin wound and, therefore, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to treat skin blemishes (wounds) via the claimed method of US '431.

Conclusion

All claims are rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is 571-272-0971. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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1654
5/18/07
RT

CHRISTOPHER R. TATE
PRIMARY EXAMINER